

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Writ Petition No: 409 of 2002

Petitioner :

1. The Board of Secondary Education and T.T.M.P Church of North India, Through its secretary 2131 Napier Town, Jabalpur (M.P)
2. The Principal, St Paul's Higher Secondary School, Byron Bazar, Raipur, Dist. Raipur Chhattisgarh.

P.R. No. 406
Filed by Shri S.K. Sharma
dated 19/2/02

-Versus-

Respondents:

1. The Controlling Authority under payment of Gratuity Act 1972/Asstt. Labour Commissioner, Dist. Raipur Chhattisgarh.
2. Charan Ajeet Singh S/o Sri Jeevan Singh, Resident of Chhotapara, Dist. Raipur, Chhattisgarh.
3. Addl. Tehsildar, Raipur, Dist. Chhattisgarh.



Attended
D.K.S. Mantralaya
MCT

AMMENDED
ORDER dated 27/3/02
31/4/02

Writ petition under article 22 through : Secretary Department of Labour India for issuance of appropriate orders. D.K.S. Mantralaya, Distt. Raipur (C.G.) etc.

FILED
RAIPUR

(4)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Writ Petition No. 409 of 2002

Petitioners	The Board of Secondary Education and another
Versus	
Respondents	The Controlling Authority-cum- Labour Commissioner, Raipur and others

Shri Sanjay K. Agarwal, Advocate for the petitioners.

Shri N. K. Vyas, Advocate for the respondent No.2.

O R D E R

(Passed on this 26th February, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed by the petitioner under Articles 226/227 of the Constitution of India seeks a writ in the nature of certiorari against the order dated 7.7.2000, passed by the Controlling Authority i.e. Labour Commissioner, Chhattisgarh, Raipur, under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972), in Case No. 81/P.G.A./2000 (Annexure P/2).
2. The admitted facts in nutshell are that the respondent No.2 was employed as Teacher in the petitioner No.2 School. Admittedly, the said school was fully Govt. aided institution. The respondent No.2 was employed since 1.7.1962 and on attaining the age of superannuation he was terminated from service w.e.f. 30.6.1996.
3. The respondent No.2 was denied payment of gratuity under the provisions of the Act, 1972. Being aggrieved the respondent No.2 filed an application before the controlling authority under the Payment of Gratuity Act, Raipur. The authority after hearing both the parties by his order dated 7.7.2000 (Annexure P/2) allowed the

application filed by the respondent No.2 directing the respondents to pay gratuity under the provisions of the Payment of Gratuity Act.

4. Being aggrieved the petitioners have filed this writ petition praying for quashing of the order dated 7.7.2000 (Annexure P/2) passed by the controlling authority.
5. Shri Sanjay K. Agarwal, learned counsel for the petitioners submits that in the case of **Miss A. Sundarambal Vs. Govt. of Goa, Daman & Diu and others** (AIR 1988 SC 1700), which was considered in the case of **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and others** { (2004) 1 SCC 755}, the Hon'ble Supreme Court, held that 'teacher' is not an 'employee' under the provisions of the Act, 1972, hence not entitled to gratuity.
6. In the present case, the question of law as to whether a teacher is entitled to payment of gratuity under the provisions of the Act, 1972 is involved and the identical question of law was considered by the Supreme Court in **Ahmedabad Pvt. Primary Teachers Assn. (Supra)** and has held as under:-

"24. The contention advanced that teachers should be treated as included in the expression "unskilled" or "skilled" cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a "skilled employee". Such adjective generally is used for an employee doing manual or technical work. Similarly, the words "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained

teachers. We do not attach much importance to the arguments advanced on the question as to whether "skilled", "semi-skilled" and "unskilled" qualify the words "manual", "supervisory", "technical" or "clerical" or the above words qualify the word "work". Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee".

7. Learned counsel for the petitioners cited a decision of this Court in the case of **Jawahar Singh Bais Vs. Secretary, Chhattisgarh Sikshan Samiti, Bilaspur & others** { 2006 (III) MPJR-CG 102} in support of his submissions.
8. Having heard learned counsel for the parties, I am of the view that the ratio laid down by the Hon'ble Supreme Court in **Ahmedabad Pvt. Primary Teachers' Assn.** (Supra) and by this Court in the case of **Jawahar Singh Bais** (Supra), is squarely applicable to the facts of the present case. Accordingly, the respondent No.2, who is a teacher, is not entitled to grant of gratuity under the Act, 1972. However, if any payment as gratuity has been made to the respondent No.2/teacher, the same shall not be recoverable.
9. For the reasons stated above, the petition is allowed. The order dated 7.7.2000 (Annexure P/2) is quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge